Supreme Court, U.S.
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No. 98-334

In The
Supreme Court of the United States

October Term 1998

MARIS FREED,
f/k/a MARIS FRIEDLANDER,
Petitioner,

v.

AMERICAN ARBITRATION ASSOCIATION,
a New York not-for-profit Corporation,-and
BURTON G. FRIEDLANDER,
Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
for The Seventh Circuit

AMERICAN ARBITRATION ASSOCIATION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW IF PETITION FOR WRIT OF CERTIORARI WERE GRANTED

Were this Court to grant petitioner's Petition For Writ Of Certiorari, only one question would be presented for review: Did the petitioner's Complaint state a claim for violation of the Fourteenth Amendment's guarantee of due process of law by alleging that the American Arbitration Association failed to state reasons for its decision not to change the locale of an arbitration from New York to Chicago?

RULE 29.6 STATEMENT

Respondent the American Arbitration Association ("AAA") is a private New York not-for-profit corporation. The AAA has no parent or subsidiary companies.

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CONSTITUTIONAL PROVISIONS AND OTHER STATUTES

The section of the Petition For Writ of Certiorari filed by Petitioner Maris Freed ("Freed") that purportedly sets out the "Constitutional Provisions, Treaties [etc] Involved" [Petition at 2-9] also contains argument.[1/] We respond to that argument in the Argument section of this Brief.

[1/] As used herein, "Petition" refers to Freed's Petition For Writ Of Certiorari. "Pet.App." refers to the Appendix attached to Freed's Petition. "R." refers to the record on appeal in the Seventh Circuit.

STATEMENT OF THE CASE

This case involves the decision by the AAA not to change the locale of an arbitration from New York, where the demand for arbitration was filed, to Chicago, where Freed wanted the locale to be.[2/] In the late 1970's Petitioner Freed and her former husband, Burton Friedlander ("Burton"), entered into an agreement that became part of their divorce decree entered by the New York court. [R.1, Complaint ¶12 and Ex.1.] That agreement included a clause specifying that disputes arising thereunder would be arbitrated pursuant to the AAA Commercial Arbitration Rules. [R.1, Complaint Ex.1.] In November 1997, Burton filed in the White Plains, New York office of the AAA a demand for arbitration of disputes between Freed and Burton arising from that agreement. [R.1, Complaint Ex.1.]

Freed, who wanted the arbitration locale to be in Chicago, objected to New York as the locale for the arbitration. [R.1, Complaint ¶31.] Rule 11 of the AAA's Commercial Arbitration Rules [quoted in Petition at 3], which was adopted by Freed and Burton, provides, in part:

2/ Because this case was dismissed by the District Court before responsive pleadings were filed, the statement of background facts is based on the Complaint filed by Petitioner Freed in the District Court. [R.1] Portions, but not all, of that Complaint, are included in the Appendix to the Petition at Pet. App. Ex. VII at 20(q)-(s). The AAA does not admit the truth of any of the factual statements or legal conclusions alleged in that Complaint.

> If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale.

The AAA considered but overruled Freed's request for a Chicago locale. [R.1, Complaint ¶32; Pet. App. Ex. VII at 20 (t).] Freed filed an appeal and request for reconsideration with the AAA. [R.1, Complaint ¶32; Pet. App. Ex. VIII at 20 (u).] The AAA considered Freed's request for reconsideration but denied it. [Ibid.] Freed then filed a Complaint in the United States District Court for the Northern District of Illinois, claiming that she was "not attacking the AAA's decision per se" but rather the fact that the AAA did not give the reasons for its decision to overrule her locale request. [R.1, Complaint ¶35-36, Pet. App. Ex.VII at 20(r).] Freed's Complaint alleged in Count I that the AAA's failure to state its reasons violated her "constitutional and due process rights and privileges" and in Count II that such alleged deprivation of due process constituted a tort and "an outrage" to Freed. [R.1, Complaint ¶¶ 35-36, 39, Pet. App. Ex. VII at 20(r)-(s); R.1, Complaint ¶ 40.]

The District Court dismissed Freed's Complaint on an oral motion. [R.4, Pet.App. II at 20 (c); IV at 20 (d).] The Court of Appeals for the Seventh Circuit summarily affirmed that dismissal without requiring the submission of briefs. [Pet. App. Ex. V at 20(e), Ex. VI at 20 (g).] The Seventh Circuit also denied Freed's motion for reconsideration. [Pet. App. Ex. VI at 20(f).]

ARGUMENT

REASONS FOR DENYING THE WRIT

The AAA's administration of the arbitration between Freed and Burton pursuant to the parties' private contract for arbitration is not state action. The AAA Rules, to which the parties agreed, provide that the AAA shall determine the locale of an arbitration. Neither those Rules nor any ruling of this Court or any of the courts of appeals requires that the AAA state reasons for its locale decision.

Both the District Court and the Court of Appeals correctly recognized that Freed did not state any claim for violation of her rights under the Fourteenth Amendment, and properly and summarily dismissed her Complaint. The decision of the courts below is consistent with well-established law, including precedent from this Court. Freed's Petition raises none of the considerations listed in Rule 10 of this Court's Rules as a reason for granting a writ of certiorari. The Petition should be denied.

I. The AAA's Administration Of The Parties' Private Contract For Arbitration Is Not "State Action"

Freed's Complaint attempts to state a claim against a private party, the AAA, for alleged violation of her constitutional rights. This Court has stated:

> Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the

> Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be.

National Collegiate Athletic Assn. v. Tarkanian, 488 U.S. 179, 191, 102 L. Ed. 469, 484 (1988), citations and footnote omitted.

In this case, the AAA is administering the arbitration between Freed and her former husband pursuant to the parties' private agreement to arbitrate that incorporated the AAA's Commercial Arbitration Rules. Arbitration statutes enacted by New York and other states do not make private arbitrations "state action." Like the Federal Arbitration Act, 9 U.S.C.§ 1, et seq., those statutes simply make enforceable the parties' agreement to arbitrate under the rules to which the parties have agreed.

> There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate.

Volt Information Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior Univ., 489 U.S. 468, 476, 103 L. Ed. 2d 488, 498 (1989).

In contrast, *Perry v. Sindermann*, 408 U.S. 593, 33 L. Ed. 2d 570 (1972), upon which Freed relies [Petition at 6-9], involved clear state action: the firing of a teacher employed by a state college.

The actions of the AAA in administering the arbitration between Freed and her former husband are not state action subject to scrutiny under the Fourteenth Amendment. Freed's claim that the AAA failed to give reasons for its decision as to the locale of the arbitration does not allege any violation of constitutionally protected rights.

II. Freed Has No Right Under The AAA Rules Or Under Law For A Statement Of Reasons For The AAA's Locale Decision

Freed's Petition should also be denied because its fundamental argument -- that the AAA is obligated to provide reasons for its locale decision -- is not correct. Freed's Complaint acknowledges:

> The [parties'] arbitration agreement . . . did not provide where the arbitration hearings would be held. As a result, Rule 11 of the Association provided that location would be determined by the Association.

[R. 1, Complaint ¶12.]

While Freed argues that the AAA "was contractually obligated to provide her with those grounds and reasons" for its locale decision [Petition at 12], she cites no factual basis for that argument. She also fails to provide a legal or factual basis for her argument that such an obligation should be implied as part of any alleged contract. [Petition at 5-6.] There is no basis for her argument.

Indeed, Freed's Petition [at 8] acknowledges New York precedents holding that arbitrators do not need to give grounds and reasons for their decisions. That view is consistent with authorities around the country, including precedent from this Court. Quoting *Bernhardt v. Polygraphic Co. of America*, 350 U.S. 198, 203 (1956) and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960), a respected authority on arbitration law has stated:

> The courts have left little doubt in this area. The United States Supreme Court has ruled that "arbitrators need not disclose the facts or reasons behind their award," and "arbitrators have no obligation to the court to give their reasons for an award."

Domke Comm Arbitration, §29:06 at 436 (Rev Ed). *Accord Prudential-Bache Securities, Inc. v. Tanner*, 72 F.3d 234 (1st Cir. 1995); *Wall Street Assoc's, L.P. v. Becker Paribas, Inc.*, 27 F.3d 845 (2d Cir. 1994); *Robbins v. Day*, 954 F.2d 679 (11th Cir. 1992); *A.G.Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401 (9th Cir. 1992); *Eljer Mfg., Inc. v. Kowin Development Corp.*, 14 F.3d 1250 (7th Cir. 1994).

The well-established principle that arbitrators need not state reasons for their awards gives no support to Freed's claim that the AAA has an obligation to state reasons for its decision regarding the locale for the arbitration.

Furthermore, Freed's Complaint begs the question of what purpose would be served by requiring the AAA to

identify reasons for administrative decisions such as locale. The obvious purpose of the AAA Rules is to expedite the process of setting up the arbitration hearings. Requiring the AAA to state reasons for administrative decisions would encourage a party like Freed who is unhappy with the decision to bring a lawsuit challenging it. Such collateral lawsuits would be pointless, since the parties, by adopting the AAA Rules, have agreed that the AAA should make the final locale decision. They would also defeat the purpose of the original arbitration agreement and of the Federal Arbitration Act and similar arbitration statutes to keep the dispute out of the courts. In any event, both parties were given an opportunity to be heard and to submit their contentions to the AAA before a decision was made.

III. There Is No Reason For Review On Certiorari

Freed's Petition raises no new or important issue for this Court. The decisions below are consistent with existing precedent, the policy of the federal and state arbitration acts and common sense. There is no reason for reviewing the Seventh Circuit's decision.

CONCLUSION

For the foregoing reasons, the American Arbitration Association respectfully requests the Court to deny the Petition.

Dated: September 25, 1998

Respectfully submitted,

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